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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,338	03/01/2004	Ajay K. Luthra	2177.16US02	9411
24113	7590	08/30/2006	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			KRUER, KEVIN R	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/790,338	Applicant(s) LUTHRA ET AL.	
	Examiner Kevin R. Kruer	Art Unit 1773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: NONE.
 Claim(s) objected to: NONE.
 Claim(s) rejected: 54-104 and 151-209.
 Claim(s) withdrawn from consideration: NONE.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Advisory Action

Applicant's arguments filed August 14, 2006 have been fully considered but are not persuasive. The proposed amendment has not been entered because it raises issues that would require further consideration and/or search. Specifically, an uncrosslinked composition has not previously been examined. The inventions of claims 210-215 also have not previously been considered. Furthermore, the proposed amendment has not been entered because the claims do not place the application in better form for appeal by materially reducing the issues on appeal. The proposed amendment also introduces new claims (210-215) without canceling a corresponding number of pending claims.

The proposed amendment has not been entered because it raises the possibility of new matter. Specifically, applicant argues that the examples teach a composition that does not contain a crosslinking agent and, therefore, the "uncrosslinked" limitation is supported by the original specification. The examiner notes, however, that the exclusion of a teaching does not necessarily give support for a negative limitation. It is also not clear from the cited sections of the specification that proposed claims 210-213 are supported by the specification. The proposed amendment to claims 167, 170, and 206 would not overcome the outstanding 112 rejection because there is no support for the endpoint "26."

With respect to the rejection of claims as being unpatentable over Alvarado in view of Tartaglia, Applicant argues the Tg range taught by Alvarado does not read on the claimed Tg range. The examiner respectfully disagrees for reasons of record.

Applicant further argues that 26°C is understood by ordinary artisans as “approaching physiological temperature.” Said argument is noted but applicant is reminded that counsel’s argument cannot take the place of evidence. Applicant is requested to file a reference/affidavit in support of said argument.

According to applicant, all the ranges and values within the explicitly stated ranges are contemplated in supported by the specification. Said argument is noted but is not supported by the USPTO’s current evaluation of the case law. The examiner maintains sufficient evidence or reasoning with regards to the 112, first paragraph rejection has been provided because there is no explicit support for said limitation in the originally filed disclosure.

Applicant argues the composition of the cited art is crosslinked. The examiner agrees but notes the pending claims do not specify that the composition is not crosslinked. Applicant further argues the references do not teach utilizing the claimed composition as a coating. The examiner respectfully disagrees. “Coating” is understood to read on any article comprising the claimed composition regardless of the manner in which it was applied/processed. There is no evidence of record that suggests the limitation “coating” should be read more narrowly.

Thus, the rejections are maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kevin R. Kruer
Patent Examiner-Art Unit 11773